

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case Number 04-43162-RJK

Felicia N. Brown,

Chapter 13 Case

Debtor.

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NOTICE OF HEARING AND MOTION OBJECTING  
TO CONFIRMATION OF CHAPTER 13 PLAN

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To: Felicia N. Brown, Apartment 2, 2825 Park Avenue, Minneapolis, MN 55407;  
Robert J. Everhart, Attorney at Law, 708 Cleveland Avenue Southwest, #101, Post Office  
Box 120534, New Brighton, MN 55112;  
Jasmine Z. Keller, Chapter 13 Trustee, Suite 310, 12 South Sixth Street, Minneapolis,  
MN 55402;  
U.S. Trustee, 1015 U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415.

City-County Federal Credit Union (City-County), by the undersigned, moves the Court  
for the relief requested below and gives notice of hearing.

NOTICE OF HEARING

1. The Court will hold a hearing on the below motion at 10:30 a.m., August 19,  
2004, at Courtroom 8 West, United States Courthouse, 300 South Fourth Street, Minneapolis,  
Minnesota 55401, or as soon thereafter as counsel can be heard.

2. Any response to this motion must be delivered and filed not later than August 16,  
2004, which is three days before the time set for the hearing (exclusive of Saturdays, Sundays,  
and legal holidays), or served and filed by mail not later than August 10, 2004, which is seven  
days before the time set for the hearing (exclusive of Saturdays, Sundays, and legal holidays).

3. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(L). This motion is filed under Bankruptcy Rules 3020(b), 9013 and 9014 and under Local Bankruptcy Rules 3015-3, 3020-1, 3020-3 and 9013-2. This proceeding arises under 11 U.S.C. §§ 1322, 1324 and 1325. Debtor commenced this Chapter 13 case on June 4, 2004. The case is now pending in this Court.

#### MOTION

4. City-County Federal Credit Union objects to confirmation of the Chapter 13 plan of the debtor dated April 13, 2004, and moves for denial of confirmation of plan based upon the facts set forth below.

#### STATEMENT OF FACTS

5. City-County Federal Credit Union has a claim against the debtor on its account 809005-50 as of June 7, 2004, in the amount of \$9,490.82 plus \$1.34 interest per day thereafter, pursuant to a note and disclosure statement with security grant dated April 4, 2003, a copy of which is attached hereto as Exhibit 1.

6. City-County Federal Credit Union's claim against the debtor on its account 809005-50 is secured by a perfected security interest in a 1998 Isuzu Trooper, VIN JACDJ58X6W7914068, as shown by the lien card, a copy of which is attached hereto as Exhibit 2.

7. The 1998 Isuzu Trooper has a base June 2004 NADA retail book value of \$8,350.00, and the same model of a 1997 Isuzu Trooper has a base June 2004 NADA retail book

value of \$6,800.00, reflecting an average reduction in value of \$129.10 per month; the value of the vehicle is decreasing with the passage of time and with use.

8. Using the June NADA retail book value of \$8,350.00 and the contract interest rate of 5.25 percent, the monthly interest attributed to the collateral value is \$36.53.

9. The collateral of City-County is valued by the debtor as \$6,925.00.

10. The Chapter 13 plan dated April 13, 2004, provides for no payments on the secured claim of City-County until after the eighth month of the plan, with initial payments in the amount of \$153.00, increasing in the 36th month of the plan to \$225.00.

11. The contract between the debtor and City-County calls for payments in the amount of \$205.00 per month.

12. City-County does not accept the debtor's plan.

13. The debtor has not provided for adequate protection of City-County's property interest in the collateral.

14. That debtor has not paid installments on her vehicle for March 2004, and thereafter while she has continued to possess the secured property of City-County.

15. The debtor has not provided proof of insurance for the subject vehicle as required by the terms of her agreement.

16. If testimony is required, Terri Nagle or Patty Brache of City-County Federal Credit Union, 6010 Earle Brown Drive, Brooklyn Center, MN 55430, may testify.

WHEREFORE, City-County Federal Credit Union moves the Court for an order:

1. Denying confirmation of the Chapter 13 plan of the debtor dated April 13, 2004;

and

2. Granting any other relief the Court deems just and proper.

Dated: August 12, 2004.

/e/ Lee W. Mosher

Lee W. Mosher

Attorney License Number 7570X

Davern McLeod & Mosher LLP

Suite 150

7500 Olson Memorial Highway

Golden Valley, Minnesota 55427

Telephone 763-545-5600

Attorneys for City-County Federal Credit Union

NOTICE REGARDING DEBT OR LIEN.

THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.

1. The amount of the debt or lien:

Account 809005-50

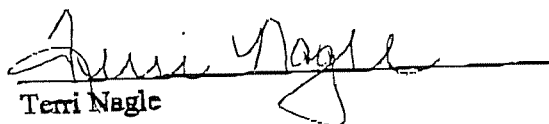
as of June 7, 2004, City-County Federal Credit Union has a claim on account 809005-50 in the amount of \$9,490.82, plus interest in the amount of \$1.34 per day thereafter, plus attorney's fees. The account is due for payments in the amount of \$205.00 commencing March 8, 2004, and every month thereafter. The account is past due as of June 7, 2004, in the amount of \$615.00.

2. The name of the creditor to whom the debt/lien is owed: City-County Federal Credit Union.
3. Unless you, within 30 days after receipt of this notice, dispute the validity of the debt/lien, or any portion thereof, the debt/lien will be assumed to be valid by the undersigned.
4. If you notify the undersigned in writing within the 30 day period that the debt/lien, or any portion thereof, is disputed, the undersigned will obtain verification of the debt/lien or a copy of a judgment against you and a copy of such verification or judgment will be mailed to you by the undersigned.
5. Upon your written request within the 30 day period, the undersigned will provide you with the name and address of the original creditor, if different from the current creditor.
6. Any information obtained will be used for the purpose of attempting to collect the debt/enforce or foreclose the lien.

THE RIGHT TO VERIFICATION OF THE DEBT OR LIEN AND IDENTITY OF THE ORIGINAL CREDITOR WITHIN THE TIME PROVIDED BY LAW ARE NOT AFFECTED BY THIS ACTION.

VERIFICATION

I, Terri Nagle, Collections Representative of City-County Federal Credit Union, named in the foregoing Notice of Hearing and Motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.  
Dated: August 12, 2004.

  
Terri Nagle

04\3\2\251652nohamqtcop02.wpd

NOTICE OF HEARING AND MOTION

## CITY-COUNTY FEDERAL CREDIT UNION

6010 Earle Brown Drive  
Brooklyn Center, MN 55430-2506809005-50  
**LOANLINER**

## NOTE AND DISCLOSURE STATEMENT

BORROWER NAME (Last - First - Middle Initial) AND ADDRESS (Street - City - State - Zip Code)	<input checked="" type="checkbox"/>	FIXED	DATE	ACCOUNT NUMBER	NOTE NUMBER
	<input type="checkbox"/>	VARIABLE	04/04/2003	809005	
	<input checked="" type="checkbox"/>	NEW LOAN	CONTRACT NUMBER	REFERENCE NUMBER	MATURITY DATE
	<input type="checkbox"/>	REFINANCE	022-0325-8	-50	06/18/07

In this agreement "you" and "your" mean each person who signs this agreement. The "credit union" means the credit union whose name appears above and anyone to whom the credit union transfers its rights under this agreement. The terms on the following pages are part of this agreement. Boxes checked below apply to this agreement.

## TRUTH IN LENDING DISCLOSURE

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Prepayment: If you pay off early you will not have to pay a penalty.
The cost of your credit as a yearly rate.	The dollar amount the will cost you.	The dollar amount of credit provided to you or on your behalf.	The amount you will have paid when you have made all payments as scheduled.	<i>e means an estimate</i>
05.2500 %	\$1,051.32	\$9,248.26	\$10,299.58	

Variable Rate: The annual percentage rate may increase during the term of this transaction if:

the 3 Month Treasury Bill (Index) changes. We will add a margin of 1.5% for new collateral and 3.5% for used collateral. The rate may change quarterly in January, April, July and October. Any interest rate increase will result in a larger amount due at maturity.  
If your loan were for \$10,000 at 8% for 60 months and the rate increased to 9% after one year, your final payment would be increased to \$226.25..

Number of Payments	Amount of Payments	When Payments Are Due	Property Insurance: You may obtain proper insurance from anyone you want that acceptable to the credit union. If you get the insurance from the credit union you will pay \$
Your Payment Schedule will be:			
50	\$ 205.00 MONTHLY BEG.	04/18/2003	
1	\$ 49.58	06/18/07	

Security: Collateral securing other loans with the credit union will also secure this loan. You are giving a security interest in your share and/or deposits in the credit union; and ☒ the goods/property being purchased; ☐ Other (Describe)

## Late Charge:

I will be charged 5% of the payment amount of 205.00 that is more than 10 days late.

Required Deposit: The Annual Percentage Rate does not take into account your required deposit, if any.

Filing Fees	Non-Filing Insurance
\$ 9.00	\$

See your contract documents for any additional information about nonpayment, default, and any required repayment in full before the scheduled date.

## ITEMIZATION OF THE AMOUNT FINANCED

ITEMIZATION OF AMOUNT FINANCED OF	AMOUNT GIVEN TO YOU DIRECTLY	AMOUNT PAID ON YOUR ACCOUNT	PREPAID FINANCE CHARGE
\$9,248.26	\$9,248.26	\$0.00	\$
AMOUNT PAID TO OTHERS ON YOUR BEHALF	To	\$	To
	To	\$	To
	To	\$	To

## NOTE AND SECURITY AGREEMENT

The following paragraph applies only if this is a variable rate loan. The initial rate of interest is 5.2500 %.

Interest: Interest will be charged from the date of this loan until you have paid what you owe under this Agreement. The interest rate is subject to change as follows:

The 3 Month Treasury Bill (Index) changes. We will add a margin of 1.5% for new collateral and 3.5% for used collateral. The rate will change quarterly in January, April, July and October. Any interest rate increase will result in a higher final payment due at maturity.

Promise to Pay: You promise to pay \$ 9,248.26 to the credit union plus interest on the unpaid balance at 5.2500 % per year until what you owe has been repaid.

## Collection Costs:

You agree to pay all costs of collecting the amount you owe under this agreement including court costs and reasonable attorney fees.

SECURITY OFFERED:	MODEL	YEAR	I.D. NUMBER	TYPE	VALUE
ISUZU	TROOPER	1998	JACD J58X6W7914068		\$
					\$
					\$
OTHER (DESCRIBE)			PLEDGE OF SHARES \$	ACCOUNT NO(S):	KEY NO.
			\$		

This Note is governed by the laws of MN.

SIGNATURE: If you agree to make and be bound by the terms of this Note and Security Agreement sign below. If you not a borrower but an owner of the collateral for this loan, sign below and check the box for "Owner of Collateral". doing so you agree only to the terms of the Security Agreement.

CAUTION: IT IS IMPORTANT THAT YOU THOROUGHLY READ THIS CONTRACT BEFORE YOU SIGN IT.

Borrower 1 <input checked="" type="checkbox"/> Owner of Collateral (other than a Borrower)	Date	Borrower 2 <input type="checkbox"/> Owner of Collateral (other than a Borrower)	Date
<i>Felicia Brown</i> (SEAL)	4-4-03	<i>X</i> (SEAL)	
Borrower	Date	Witness	Date
<i>X</i> (SEAL)		<i>X</i> (SEAL)	

EXHIBIT 1

**NOTE (Continued)**

Please look at the box on page 1 to see if this is a fixed or variable rate loan.

The following paragraph applies only to variable rate loans:

**PROMISE TO PAY --** You promise to pay to the credit union, the amount you owe under this agreement at an interest rate which will vary as provided on page 1. You promise to pay interest, as provided on page 1, until what you owe has been repaid. The amount you owe under this agreement is the Amount Financed shown in the Truth in Lending Disclosure on page 1, plus any other amounts advanced by the credit union to you or on your behalf under this agreement.

The remaining paragraphs apply to both fixed and variable rate loans:

**PAYMENTS --** You promise to make payments of the amount and at the time shown in the Truth in Lending Disclosure on page 1 until what you owe has been repaid. You may make larger payments without penalty. If you do prepay part of what you owe, subsequent payments will remain due as scheduled. If you do not make payments as scheduled or if you elect credit insurance, your last payment may be larger than the amount of the other payments. You promise to make payments at the place chosen by the credit union.

**LOANS BY MAIL --** If this loan is being made by mail, interest on this loan begins when the loan proceeds are mailed. If this loan refinances an earlier loan, said loan will be cancelled and refinanced as of the date on page 1.

**SECURITY INTEREST --** Any property shown in the "Security Offered" section will be security for this loan. In addition, you agree this loan is also secured by all the shares and deposits in all your individual and joint accounts with the credit union now and in the future. Shares and deposits in an Individual Retirement Account and any other account that would lose special tax treatment under state or federal law if given as security are not subject to the security interest you give in your shares and deposits. All property, other than dwellings, that you have given to secure other loans with the credit union will also secure this loan.

**DEFAULT --** You will be in default if you do not make a payment of the amount required when it is due. You will be in default if you break any promise you made in connection with this loan. You will be in default if you die, file for bankruptcy or become insolvent, that is, unable to pay your obligations when they become due. You will be in default if you make any false or misleading statements in any credit application or update of credit information. You will be in default if anyone who has signed a security agreement in connection with this loan is in default. You will also be in default if something happens which the credit union believes may substantially reduce your ability to repay what you owe.

When you are in default, the credit union can demand immediate payment of the unpaid balance of this loan without giving you advance notice. If the credit union demands immediate payment of the unpaid balance, you will continue to pay interest at the same interest rate until what you owe has been repaid. If the credit union has demanded immediate payment of the unpaid balance, the credit union can apply the shares and deposits that you have given as security under this agreement towards what you owe. The credit union can also exercise any other rights the law gives the credit union when you are in default.

**EACH PERSON RESPONSIBLE --** Each person who signs this agreement will be individually and jointly responsible for paying the entire amount owed. That means the credit union can enforce its rights under this agreement against any one of you individually or against all of you together.

**LATE CHARGE --** If you are late in making a payment, you agree to pay the late charge shown in the Truth in Lending Disclosure on page 1. If no late charge is shown, you will not be charged one.

**NO WAIVER --** The credit union can delay enforcing any of its rights any number of times without losing its rights.

**NOTICES --** Notices will be mailed to you at the most recent address you have given the credit union in writing. Notice to any one of you will be notice to all.

**SECURITY AGREEMENT**

In this agreement all references to "credit union" mean the credit union whose name appears on this note and anyone to whom the credit union assigns the loan. All references to "the loan" mean the loan described in the Truth in Lending Disclosure. All references to "you" mean each person who signs this agreement.

**THE SECURITY FOR THE LOAN --** By signing this security agreement in the signature area or by signing the statement referring to this agreement on the back of the check you receive for your loan, you give the credit union what is known as a security interest in the property described in the "Security Offered" section. The security interest you give includes all accessions. Accessions are things which are attached to or installed in the property now or in the future. The security interest also includes any replacements for the property which you buy within 10 days of the loan or any extensions, renewals or refinancing of the loan. It also includes any money you receive from selling the property or from insurance you have on the property. If the value of the property declines, you promise to give the credit union more property as security if asked to do so.

**WHAT THE SECURITY INTEREST COVERS --** The security interest secures the loan described in the Truth in Lending Disclosure and any extensions, renewals or refinancings of that loan. It also secures any other loans you have with the credit union now or in the future including any credit card loans and any other amounts you owe the credit union for any reason now or in the future, except any loan secured by your principal residence. If the property description is marked with one star (\*), or the property is household goods as defined by the Credit Practice Rule, the property will secure only this loan and not other amounts you owe.

**OWNERSHIP OF THE PROPERTY --** You promise that you own the property, or if this loan is to buy the property, you promise you will use the loan for that purpose. You promise that no one else has any interest in or claim against the property that you have not already told the credit union about. You promise not to sell or lease the property or to use it as security for a loan with another creditor until your loan with the credit union is repaid. You promise you will allow no security interest or lien to attach to the property either by your actions or by operation of law.

**PROTECTING THE SECURITY INTEREST --** If your state issues a title for the property, you promise to have the credit union's security interest shown on the title. The credit union may have to file what is called a financing statement to protect its security interest from the claims of others. If asked to do so, you promise to sign a financing statement. You also promise to do whatever else the credit union thinks is necessary to protect its security interest in the property.

**USE OF PROPERTY --** Until the loan has been paid off, you promise you will: (1) Use the property carefully and keep it in good repair. (2) Obtain written permission from the credit union before making major changes to the property. (3) Inform the credit union in writing before changing your address or the address where the property is kept. (4) Allow the credit union to inspect the property. (5) Promptly notify the credit union if the property is damaged, stolen or abused. (6) Not use the property for any unlawful purpose.

**PROPERTY INSURANCE, TAXES AND FEES --** You promise to pay all taxes and fees (like registration fees) due on the property and to keep the property insured against loss and damage. The amount and coverage of the property insurance must be acceptable to the credit union. You may provide the property insurance through a policy you already have or through a policy

you get and pay for. You promise to make the insurance policy payable to the credit union and to deliver the policy or proof of coverage to the credit union if asked to do so.

If you cancel your insurance and get a refund, the credit union has a right to the refund. If the property is lost or damaged, the credit union can use the insurance settlement to repair the property or apply it towards what you owe. You authorize the credit union to endorse any draft or check which may be payable to you in order for the credit union to collect any refund or benefits due under your insurance policy.

If you do not pay the taxes or fees on the property when due or keep it insured, the credit union may pay these obligations, but is not required to do so. Any money the credit union spends for taxes, fees or insurance will be added to your loan balance and you will pay interest on those amounts at the same rate you agreed to pay on the loan. If the credit union adds amounts for taxes, fees, or insurance to your loan balance, your payments may be increased by the amount necessary for your loan to be paid off in the same number of months originally scheduled.

**DEFAULT --** You will be in default if you break any promise you make under this agreement. You will also be in default if you are in default under the loan, if you are pledging property, but have signed only as an "Owner or Collateral (other than a Borrower)", you will be in default if anyone is in default who has signed the LOANLINER Note.

**WHAT HAPPENS IF YOU ARE IN DEFAULT --** When you are in default, the credit union can, without advance notice to you, require immediate payment of what you owe on the loan and take possession of the property. You agree the credit union has the right to take possession of the property without going to court and without giving you advance notice. If you are asked to do so by the credit union, you promise to deliver the property at the time and place the credit union chooses. The credit union will not be responsible for any of your other property, not covered by this agreement that you leave inside the property. The credit union will try to return the property to you or make it available for you to claim.

After the credit union has possession of the property, it can sell it and apply the money received to any amounts you owe the credit union. The credit union will give you notice of any public sale or the date after which private sale will be held. The expenses of the credit union for taking possession of and selling the property will be deducted from the money received from the sale. Those costs may include the cost of storing the property, preparing it for sale and attorney's fees to the extent permitted under state law or awarded under Section 506(b) of the Bankruptcy Code. The rest of the sale money will be applied to what you owe on the loan.

If you have agreed to pay the loan, you will also have to pay any amount that remains unpaid after the sale money has been applied to what you owe on the loan and under this agreement. You agree to pay interest on that amount at the same rate as the loan until that amount has been paid.

**DELAY IN ENFORCING RIGHTS AND CHANGES IN THE AGREEMENT** The credit union can delay enforcing any of its rights under this agreement any number of times without losing the ability to exercise its rights later. The credit union can enforce this agreement against your heirs or legal representatives. If the credit union changes the terms of the loan, you agree that this agreement will continue to protect the credit union.

**CONTINUED EFFECTIVENESS --** If the law makes any term(s) of this plan unenforceable, the other terms will remain in effect.

**THE PROPERTY DESCRIPTION IN THE "SECURITY OFFERED" SECTION IS PART OF THIS AGREEMENT.****NOTICE: SIGN THIS AGREEMENT ON PAGE 1.****FOR TENNESSEE CREDIT UNIONS ONLY --  
USE WHEN AUTOMOBILE IS PURCHASED**

**NOTICE:** If you do not purchase the insurance required on the automobile and the credit union purchases the insurance, the insurance purchased by the credit union will cover only the credit union's interest in the property. The insurance will not be liability insurance. You have read the above statement and acknowledge that the credit union has explained it to you.

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_  
X  
SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_  
X

**FOR NORTH DAKOTA CREDIT UNIONS ONLY --  
APPLIES ONLY WHEN A MOTOR VEHICLE IS PURCHASED**

**NOTICE:** THE MOTOR VEHICLE IN THIS TRANSACTION MAY BE SUBJECT TO REPOSSESSION. IF IT IS REPOSSESSED AND SOLD TO SOMEONE ELSE, AND ALL AMOUNTS DUE TO THE SECURED PARTY ARE NOT RECEIVED IN THAT SALE, YOU MAY HAVE TO PAY THE DIFFERENCE.

**FOR CREDIT UNION USE ONLY: Credit Union Approval**

X  
AUTHORIZED CREDIT UNION SIGNATURE \_\_\_\_\_

**CERTIFICATE**

STATE OF \_\_\_\_\_ SS. \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The undersigned notary public certifies that the above and foregoing is a true copy of the original security agreement, executed, and delivered by the debtor named therein and to the secured party therein.

(SEAL)

My commission expires: \_\_\_\_\_ Residing in \_\_\_\_\_  
(COUNTY)

SECURED PARTY SIGNATURE (If Required)

CREDIT UNION COPY

NOTARY PUBLIC

CMN12 (LASE) 6842

## CITY-COUNTY FEDERAL CREDIT UNION

6010 Earle Brown Drive  
Brooklyn Center, MN 55430-2506

LOANLINER

## CREDIT INSURANCE

You can protect your financial future by signing up for **voluntary** credit insurance below. Enroll by simply indicating your preference in the "Credit Insurance Application" section below. Your credit union will be happy to explain the various insurance options and coverage. The cost is reasonable.



CUNA MUTUAL GROUP

CUNA Mutual Insurance Society

P.O. Box 391 • 5910 Mineral Point Road  
Madison, WI 53701-0391  
Phone: 800/937-2644

## CREDIT INSURANCE APPLICATION &amp; SCHEDULE

"You" or "Your" means the member and the joint insured (if applicable).

Credit Insurance is **voluntary** and **not required** in order to obtain this loan. You may select any insurer of your choice. You can get this insurance only if you check the "yes" box below and sign your name and write in the date. The rate you are charged for the insurance is subject to change. You will receive written notice before any increase goes into effect. You have the right to stop this insurance by notifying your credit union in writing. Your signature below means you agree that:

- If you elect insurance, you authorize the credit union to

add the charges for insurance to your loan each month

- You are eligible for disability insurance only if you are working for wages or profit for 25 hours a week or more on the date of any advance. If you are not, the particular advance will not be insured until you return to work. If you are off work because of temporary layoff, strike or vacation, but soon to resume, you will be considered at work.
- You are eligible for insurance up to the Maximum Age for Insurance. Insurance will stop when you reach the age.

YOU ELECT THE FOLLOWING INSURANCE COVERAGE(S)	YES	NO	PREMIUM SCHEDULE	COVERED MEMBER
Single Credit Disability		X		FELICIA N. BROWN
Single Credit Life		X		
Joint Credit Life		X		

If you are totally disabled for more than 14 days, then the disability benefit will begin with the 1st day of disability.

MEMBER	INSURANCE MAXIMUMS	DISABILITY	LIFE
FELICIA N. BROWN	MONTHLY TOTAL BENEFIT	\$ 850.00	N/
ACCOUNT NUMBER	INSURABLE BALANCE PER LOAN ACCOUNT	\$ 50,000.00	\$ 50,000.00
809005	MAXIMUM AGE FOR INSURANCE	66	7
SECONDARY BENEFICIARY (If you desire to name one)			

DATE	BORROWER'S DATE OF BIRTH	DATE	CO-BORROWER'S DATE OF BIRTH
	07/04/1979		
SIGNATURE OF BORROWER ELIGIBLE TO BE INSURED		SIGNATURE OF JOINT INSURED (CO-BORROWER) (Only required if JOINT CREDIT LIFE coverage is selected)	
FELICIA N. BROWN			
APP. 821-0786MN			



JRR

MINNESOTA DEPARTMENT OF PUBLIC SAFETY  
DRIVER & VEHICLE SERVICES DIVISION  
445 MINNESOTA ST., ST. PAUL, MN 55101  
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

809005-50

First Class  
U.S. Postage  
**PAID**  
Permit No. 171  
St. Paul, MN

BROWN FELICIA NADIR  
1830 HAYES ST NE #7  
MPLS MN 55418

\*

KPZ205

Year 98	Make ISU	Model 4WTRO	Title VIN G1260R351
VIN JACDJ58X6W7914068		Security Date 04/04/03	Rebuit NO

1ST SECURED PARTY

**LIEN HOLDER**

RETAIN THIS DOCUMENT - See reverse  
side of this form for removing this lien.

CITY COUNTY FED CREDIT UNION  
6010 EARLE BROWN DR  
BROOKLYN CENTER MN 55430-2506

EXHIBIT 2

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case Number 04-43162-RJK

Felicia N. Brown,

Chapter 13 Case

Debtor.

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MEMORANDUM IN SUPPORT OF MOTION  
OBJECTING TO CONFIRMATION OF PLAN

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FACTS

City-County Federal Credit Union ("City-County") holds a secured claim against the debtor pursuant to a note and disclosure statement dated April 4, 2003. As of June 7, 2004, the amount of the claim was \$9,490.82, plus \$1.34 per day interest thereafter. The claim is secured by a 1998 Isuzu Trooper. The debtor has no equity in the collateral.

The debtor states a value for the Trooper of \$6,925.00. The Trooper has an June 2004 base NADA retail book value of \$8,350.00. The same model one year older has an June 2004 base NADA retail book value of \$6,800.00, which represents an average decrease in value of \$129.16 per month. In addition, interest accrues at the contract rate in the amount of \$36.53 each month based upon the NADA retail book value of the collateral. Thus, the amount of \$165.69 equals the initial monthly loss of value in the collateral plus interest on that value. The contract calls for payments in the amount of \$205.00 per month. Payments are owing from March 2004.

The plan of the debtor does not provide any payments to City-County until after the eighth month. City-County objects to the plan on the grounds that (1) the plan is not proposed in good faith and not by any means forbidden by law, (2) the plan fails to make payments to City-

County to provide adequate protection of its interest in the secured collateral, (3) the plan does not meet the requirements of 11 U.S.C. § 1325(a)(5)(B)(ii).

## ARGUMENT

### Good Faith

The plan is not proposed in good faith because the debtor proposes to use the property of City-County without making any payment during a period of at least eight months, while the value of the property decreases. No guaranty of payment is provided by the plan. A Chapter 13 Plan must be "proposed in good faith and not by any means forbidden by law." 11U.S.C § 1325 (a)(3).

### Payment of Secured Claim

The plan is objectionable because it does not provide value to City-County equal to the amount of its secured claim, as required by 11 U.S.C. § 1325(a)(5)(B)(ii). Section 1325(a) of the Code provides that except as provided in subsection (b), relating to trustee or unsecured creditor objections, the Court shall confirm a plan if the plan complies with the provisions of § 1325(a). Section 1325(a)(5) provides that the Court shall confirm a plan if:

- (5) with respect to each allowed secured claim provided for by the plan--
  - (A) the holder of such claim has accepted the plan;
  - (B)(i) the plan provides that the holder of such claim retain the lien securing such claim; and
  - (ii) the value, as of the effective date of the plan, of property to

be distributed under the plan on account of such claim is not less than the allowed amount of such claim; or

- (C) the debtor surrenders the property securing such claim to such holder.

In this case, City-County has not accepted the plan. In this case, the plan proposes that City-County will retain its lien on the vehicle, but no payments will be made for at least eight months after the filing of the case. *Compare, In re Green*, 151 B.R. 501 (Bankr. D. Minn. 1993), relating to valuation of the lien. A promise of future payment, even with interest, does not have the actual value of a present payment received or a guaranteed future payment or the present delivery of property securing future payments. The naked promise to pay does not provide actual value.

Under the circumstances, City-County has little recourse but to object to confirmation on the grounds that the plan does not protect City-County's secured interest as required by 11 U.S.C. § 1325(a)(5)(B)(ii). *See, In re Schyma*, 68 B.R. 52, 66 (Bankr. D. Minn. 1985). In order for a plan to be confirmed, the value of the secured creditor's property interest must be protected during the pendency of a Chapter 13 case. Where a secured motor vehicle will decrease in value during the course of a plan with payments to the secured creditor being deferred over objection, the plan may not be confirmed. *In re Johnson*, 63 B.R. 550 (Bankr. D. Colo. 1986).

Although *In re Moses*, 293 B.R. 711 (Bankr. E.D. Mich 2003), may be cited as authority for a one-month delay in the commencement of payments post-confirmation, *the Moses* decision was based upon a decision of the Central District of Illinois Bankruptcy Court, *In re Walters*, 203 B.R. 122 (Bankr. C.D. Ill. 1966), that adequate protection does not apply post-confirmation.

City-County argues here that adequate protection applies from the time of filing and

throughout the duration of the case, particularly when a secured creditor raises an objection. In an Eight Circuit decision involving a Chapter 12 Plan, which has requirements parallel to Chapter 13 plans:

The confirmation requirements of § 1225(a) implicitly embody the concept of adequate protection for a secured creditor's claim. *See also* Farm Bankruptcy Guide ¶ 4.08[2][b], at 4-95 ("debtor's good faith obligation, and perhaps constitutional considerations as well, will require that the creditor's interest in its collateral be protected at all times during the plan repayment period"). The lien retention requirement itself is not met if payments under the plan to reduce the principal amount of the claim will not keep pace with the depreciation of the lien collateral. *In re Borg*, 88 B.R. 288, 292 (Bankr.D.Mont.1988). In addition, the requirement of adequate protection is also contained in § 1225(a)(5)(B)(ii) and § 1225(a)(6), which require that the secured creditor receive payments under the plan at least equal to the present value of its claim and that the debtor will be able to make all those payments. *In re Adam*, 92 B.R. 732, 735 (Bankr.E.D.Mich.1988).

*Abbott Bank-Thedford v. Hanna*, 912F.2d 945, 951 (8th Cir. 1990).

The better and more authoritative view of plan requirements for secured claim treatment is that the secured creditor is entitled to adequate protection of its secured position from the time that the case is filed and thereafter when an objection is raised by the secured creditor. The plan must provide adequate protection and pay the lien value in order to meet confirmation requirements after objection is made.

## CONCLUSION

The plan of the debtor is not proposed "in good faith and not by any means forbidden by law" when the plan projects no payments for at least eight months and provides no guaranty that those payments will ever be received, even though the debtor will continue to use the secured

collateral while it decreases in value. The plan does not make payments to City-County to provide adequate protection of the decrease in value of its secured collateral and pay the creditor the value of its secured lien. Accordingly, confirmation should be denied.

Dated: August 12, 2004.

Respectfully Submitted,

/s/ Lee W. Mosher

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CERTIFICATE OF SERVICE

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN    )

Melissa M. Peterson of the City of Plymouth, County of Hennepin, State of Minnesota, certifies under penalty of perjury that on August 12, 2004, she served the annexed

1. Notice of Hearing and Motion Objecting to Confirmation of Chapter 13 Plan;
2. Memorandum in Support of Motion Objecting to Confirmation of Plan;
3. Proposed Order Denying Confirmation of Plan; and
4. Certificate of Service.

on each person named below by mailing to each of them a copy thereof, enclosed in an envelope, postage prepaid, and by depositing same in the mail at Golden Valley, Minnesota, directed to each person at the address shown below.

Felicia N. Brown  
Apartment 2  
2825 Park Avenue  
Minneapolis, MN 55407

Jasmine Z. Keller  
Chapter 13 Trustee  
Suite 310  
12 South Sixth Street  
Minneapolis, MN 55402

Robert J. Everhart  
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708 Cleveland Avenue Southwest, #101  
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New Brighton, MN 55112

U.S. Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

/e/ Melissa M. Peterson

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case Number 04-43162-RJK

Felicia N. Brown,

Chapter 13 Case

Debtor.

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ORDER DENYING CONFIRMATION OF PLAN

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The above case came on before the Court on August 19, 2004, for hearing on confirmation and the objection by City-County Federal Credit Union to confirmation of the Chapter 13 plan of the debtor dated April 13, 2004. Lee W. Mosher appeared on behalf of City-County Federal Credit Union. Other appearances were noted on the record.

Upon the motion and all files, records and proceedings herein.

IT IS HEREBY ORDERED, THAT:

1. Confirmation of the Chapter 13 plan dated April 13, 2004, is denied.

Dated: \_\_\_\_\_, 2004.

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Judge of Bankruptcy Court